

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ANDREA MOREHEAD ALLEN,

Plaintiff,

v.

TEGNA, INC. VIDEOINDIANA, INC.
WTHR CHANNEL 13,

Defendant.

Case No. 1:21-cv-00086-JMS-MJD

Judge Jane Magnus-Stinson

Magistrate Judge Mark J. Dinsmore

MOTION TO DISMISS PLAINTIFF’S SECOND AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants VideoIndiana, Inc. d/b/a WTHR Channel 13 and TEGNA Inc. (“Defendants”), move to dismiss with prejudice Paragraphs 101, 103, 107, 108, 110, and 111 of the Second Amended Complaint. In support of its Motion and as explained in more detail in Defendant’s Memorandum of Law in Support of this Motion, Defendant states as follows:

1. Plaintiff filed her Second Amended Complaint (“SAC”) on November 11, 2021. ECF No. 53 (“SAC”).
2. The SAC includes new claims of Title VII claims of race discrimination related to pay and termination of employment; Section 1981 claims of race discrimination related to pay and termination of employment; Title VII claims of gender discrimination related to termination of employment and harassment; Title VII claims of sex discrimination related to pay; Equal Pay Act claims related to pay; ADA claims related to harassment; and breach of contract. (ECF No. 53, ¶¶ 100-114.)
3. Plaintiff’s new Title VII and ADA claims related to pay and harassment (SAC ¶¶ 103, 107, 110, 111) are untimely. These claims were included in Plaintiff’s EEOC charge

filed on May 27, 2020, for which she received a Notice of Right to Sue from the EEOC on October 15, 2020. Plaintiff was required to file suit on these claims within 90 days from the date of receipt of the notice of the right to sue. 42 U.S.C. § 2000e–5(f)(1); 42 U.S.C. § 12117(a); *Houston v. Sidley & Austin*, 185 F.3d 837, 838–39 (7th Cir. 1999). However, she did not assert these new claims until November 11, 2021 (ECF No. 53), many months after the 90-day period expired. Dismissal under Rule 12(b)(6) is “appropriate when the complaint alleges facts sufficient to establish that the suit is indeed tardy.” *McCleery v. Avalanche Food Grp.*, No. 1:17-CV-1365-WTL-DML, 2017 WL 6550619, at *1 (S.D. Ind. Dec. 4, 2017) (citing *Amin Ijbara Equity Corp. v. Vill. of Oak Lawn*, 860 F.3d 489, 492 (7th Cir. 2017)).

4. Plaintiff’s new Equal Pay Act claim (SAC ¶ 108) fails to state a claim upon which relief can be granted. An Equal Pay Act claim requires her to show: “(1) that different wages are paid to employees of the opposite sex; (2) that the employees do equal work which requires equal skill, effort and responsibility; and (3) that the employees have similar working conditions.” *Bragg v. Navistar Intern. Transp. Corp.*, 164 F.3d 373, 378 (7th Cir. 1998). The SAC does not contain any information about the actual job duties or the level of skill, effort, or responsibility required to perform Plaintiff’s job. Nor does the SAC identify any alleged male comparator, provide any information regarding the work of any alleged male comparator, or provide any information regarding Plaintiffs’ own compensation or the compensation of any alleged male comparator. Plaintiff offers only conclusions without providing the required factual basis to support the new claims. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Accordingly, the claim should be dismissed. *See Wade v. Morton Bldgs., Inc.*, No. 09-1225, 2010 WL 378508, at *6 (C.D. Ill. Jan. 27, 2010)

(granting employer's motion to dismiss Equal Pay Act claims where allegations do not identify the comparable male employee or his position.).

CONCLUSION

5. For these reasons, and as explained above and more fully in Defendant's Memorandum of Law in Support of its Motion to Dismiss, Paragraphs 101, 103, 107, 108, 110, and 111 of the Second Amended Complaint should be dismissed with prejudice pursuant to Rule 12(b)(6) because Plaintiff has failed to state a claim upon which relief can be granted.

DATED: November 26, 2021

Respectfully submitted,

SEYFARTH SHAW LLP

By: /s/ Camille Olson

Camille Olson

Camille Olson

Richard Lapp

Christina Jaremus

colson@seyfarth.com

rlapp@seyfarth.com

cjaremus@seyfarth.com

SEYFARTH SHAW LLP

233 South Wacker Drive

Suite 8000

Chicago, Illinois 60606-6448

Telephone: (312) 460-5000

Facsimile: (312) 460-7000

Attorneys for Defendants VideoIndiana, Inc. d/b/a WTHR Channel 13 and TEGNA, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2021, a true and correct copy of this document was filed sent via email to the following individual:

Amber K. Boyd
8510 Evergreen Avenue
Indianapolis, Indiana 46240
amber@amberboydlaw.com
Telephone: (317) 210-3416
Attorney for Plaintiff

/s/ Camille Olson

One of the Attorneys for Defendants